

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. _____

AMY NUGENT, an individual doing business as CROWN CHIC BOUTIQUE,

Plaintiff,

v.

CROWN CHIC, INC. a Kansas corporation, SHERRI L. LITTON, an individual; and RONALD LITTON, an individual;

Defendants.

COMPLAINT

Plaintiff Amy Nugent (“Nugent”) complains of defendants and alleges as follows:

JURISDICTION

1. This is an action for preliminary and permanent injunctive relief under the Trademark Act of 1946, as amended, 15 U.S.C. §§ 1051, *et seq.* {hereinafter the “Trademark Act”] and common law. Jurisdiction of this Court is conferred by 15 U.S.C. §§1116, 1121 and 1125(a) and 28 U.S.C. §§1331 and 1338.

THE PARTIES

2. Plaintiff Amy Nugent (hereinafter "Nugent") is a resident of the State of Colorado and doing business as Crown Chic Boutique. Nugent has an established place of business at 9474 La Costa Lane, Lone Tree, Colorado 80124. Nugent does business in Colorado and throughout the United States under the marks Crown Chic Boutique and its abbreviation, Crown Chic, by selling pageantry related products through her website www.crownchic.com.

3. On information and belief, Defendant Crown Chic, Inc. (hereinafter "CCI") is a corporation organized under the laws of the State of Kansas with an address of 1331 E. Sleepy Hollow, Olathe, Kansas 66062. It also has a retail store at 12213 W. 63rd St., Suite G, Shawnee, Kansas 66216. In addition, it sells products online through its website www.crownchic.biz. Upon information and belief, CCI is currently doing business in Colorado, through, among other things, its distribution and sale of pageantry-related products to customers in Colorado.

4. On information and belief, Defendant Sherri L. Litton (hereinafter "Sherri Litton") is believed to be a resident of the State of Kansas, an owner of CCI and doing business within the District of Colorado.

5. On information and belief, Defendant Ronald Litton (hereinafter "Ronald Litton") is believed to be a resident of the State of Kansas, an owner of CCI and doing business within the District of Colorado.

BACKGROUND

6. Nugent is the former Mrs. Colorado-America 1996 and is well known in the pageant industry. She has spent considerable time, effort and money since 2004 developing her online store, Crown Chic Boutique, for pageantry related products. She has traveled to multiple pageants promoting her marks Crown Chic Boutique and Crown Chic and her pageantry related products and indeed sponsored many pageants across the country. She has also advertised her marks and products in several trade publications since 2004 including Pageantry and Supermodels Unlimited magazines and also on the website, "www.pageantlink.com".

7. Nugent has also worked as a professional vocalist in the Denver area for 19 years.

In 1999, she released her first CD entitled “Grateful Heart”, showcasing her own music and raising funds for The Children’s Hospital Cancer Center. In that same year, Nugent was presented with the 1999 Townes Van Zandt award for outstanding songwriting by the Dallas Songwriters' Association and was a finalist in the Unisong International Song Contest and the Mid-Atlantic Song Contest. Her music has been featured on the nationally syndicated “I Write The Songs” radio show, local radio and television stations. She has also had the honor of performing the National Anthem for the Colorado Rockies and the Denver Broncos. While Nugent does not promote her Crown Chic business while performing and recording, there is nonetheless no question that Nugent and her considerable reputation are personally associated with her Crown Chic business and marks.

8. When Nugent selected the names/marks of Crown Chic Boutique and Crown Chic in 2004 she went to great lengths to make sure that the selected names/marks were not only catchy and fanciful but also were not being used by anyone else. She conducted searches for the words Crown and Chic and found no one using the terms together as Crown Chic or for that matter Chic Crown. As such, Nugent’s names/marks, Crown Chic Boutique and Crown Chic, are truly unique.

9. Nugent registered her domain names www.crownchic.com and www.crownchicboutique.com on August 20, 2004. (See Exhibit A hereto) Nugent’s online store went live in November, 2004 and is accessible through both domain names, i.e. www.crownchic.com and www.crownchicboutique.com.

10. In early July, 2007, Nugent received an inquiry from an individual inquiring about

Defendants' products. It was at this time Nugent first learned of Defendants' competing online store which uses the web address of www.crownchic.biz which is identical to Nugent's web address except for the extension, i.e. .biz instead of .com.

11. In any event, after learning of Defendants' website, Nugent visited Defendants' website and was outraged to find that not only is Defendants' web address virtually identical to Nugent's, their product line is also very similar. For example, both the Defendants and Nugent sell clothing and jewelry as established by the attached printouts from Nugent's and Defendants' websites. (Exhibits B and C hereto respectively)

12. The parties' customers are also very similar if not identical and include pageant contestants and others attracted to the pageant industry and pageantry related products. Indeed, proof that the Defendants' business is directed to the pageant industry is found in an article published in the Shawnee Dispatch in which Defendant Sherri Litton boasts that "We're really considered the Midwest's premiere pageant shop." (See Exhibit D attached hereto)

13. In view of the above, there is no question that Nugent and Defendants are competitors and that confusion by customers is not only likely, but without question. Indeed, such confusion has already occurred as established by the above identified individual who called Nugent thinking she was calling the Defendants' store. Another similar instance of actual confusion occurred in October, 2007.

14. In July of 2007, immediately after learning of Defendants' website and contacting her attorney, Nugent, through her attorney, sent Defendant Sherri Litton a cease and desist letter which is attached hereto as Exhibit E.

15. On July 19, 2007 Defendants responded to the cease and desist letter by telephoning Nugent's attorney. During the call Defendants offered to change their website domain name to "www.crownchicgowns.com". Defendants were advised during this telephone conversation and by letter dated July 30, 2007 (See Exhibit F hereto) that this proposal was unacceptable since would not eliminate the potential for confusion since the dominant portion of Defendant's proposed mark still included the words "crown" and "chic".

16. Nugent was also advised after learning of Defendants' website that she should file a trademark application with the United States Patent and Trademark Office (USPTO) to register her Crown Chic mark as a service mark. She did that on July 20, 2007 and a copy of the application which was filed with the USPTO is attached hereto as Exhibit G.

17. On October 25, 2007, Nugent received a first Office Action (Exhibit H hereto) from the USPTO regarding her application to register her mark Crown Chic. Applicant was outraged to find that Defendants Sherri and Ronald Litton had also filed an application with the USPTO to register the same exact mark Crown Chic for evening gowns. Even more outrageous was the fact that Defendants' application was filed on July 20, 2007, the day after the Litton Defendants called Nugent's attorney to discuss Nugent's cease and desist letter. This day also happened to be the same day Nugent filed her application to register Crown Chic. However, because the Litton Defendants' application was filed a few hours before Nugent's application was filed, the Litton Defendants' application has priority over Nugent's in the eyes of the USPTO. The Office Action states as follows:

The Office records have been searched and no similar *registered* mark has been found that would bar registration under Trademark Act Section 2(d), 15 U.S.C.

§1052(d). TMEP §704.02. **However**, please be advised that a potentially conflicting mark in a prior-filed pending application may present a bar to registration. Information regarding pending Application Serial No. 77234800 is enclosed. **The filing date of the referenced application precedes applicant's filing date. There may be a likelihood of confusion between the two marks under Trademark Act Section 2(d), 15 U.S.C. §1052(d). If the referenced application registers, registration may be refused in this case under Section 2(d). 37 C.F.R. §2.83; TMEP §§1208 et seq.** (Emphasis added)

18. The Litton Defendants also received an Office Action from the USPTO regarding their application to register Crown Chic as a trademark on October 25, 2007. The Litton Defendants' Office Action indicates that their Crown Chic mark is registerable and will register in due course upon their submission of an acceptable specimen. Since the submission of an acceptable specimen is typically an easily completed task, the Litton Defendants' Crown Chic mark will in all likelihood be registered in the very near future on the USPTO's principal register for trademarks. Indeed, the Litton Defendants have already filed their response (Exhibit I hereto) to the Office Action having filed it on October 26, 2007, the day after they received the Office Action.

19. Page 2 of the Litton Defendants' response to the Office Action sets forth a Declaration which Defendant Sherri Litton signed on October 25, 2007 in response to the Office Action. As set forth therein, Defendant Sherri Litton stated under penalty of perjury that:

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. §1051(b), he/she believes applicant to be entitled to use such mark in commerce; **to the best of his/her knowledge and belief no other person, firm, corporation, or**

association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as to be likely, when used on or in connection with the goods or services of such other person, to cause confusion, or to cause mistake, or to deceive; that if the original application was submitted unsigned, that all statements in the original application and this submission made of the declaration signer's knowledge are true; **and all statements in the original application and this submission made on information and belief are believed to be true.** (Emphasis added)

Amazingly, Defendant Sherri Litton signed this Declaration as well as a similar Declaration filed when she and Defendant Ron Litton filed the application on July 20, 2007 even though she possessed full knowledge of Nugent's superior rights in the identical mark. The cease and desist letter which Nugent sent Defendant Sherri Litton on July 16, 2007 clearly states that Nugent's rights extend back to 2004. This is well before Defendants began using the mark which as established by Defendants' own trademark application is around June 1, 2006.

20. Accordingly, after being put on notice of Nugent's superior rights in the Crown Chic mark, Defendant Sherri Litton could not have declared in good faith as stated in the Declarations that **"to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as to be likely, when used on or in connection with the goods or services of such other person, to cause confusion, or to cause mistake, or to deceive"**. Accordingly, the Declarations signed by Defendant Sherri Litton Declaration were not signed in good faith and are fraudulent.

21. The superiority of Nugent's rights in the Crown Chic mark is also corroborated by the dates of their respective domain name registrations. Nugent's domain name www.crownchic.com as discussed above and set forth in Exhibit A was registered on August 20,

2004 almost 2 years before Defendants' www.crownchic.biz domain name was registered on May 25, 2006. (See Exhibit J hereto).

22. Upon information and belief, Defendants were also aware that Nugent's domain name www.crownchic.com was already registered to Nugent when they registered www.crownchic.biz.

23. All conditions precedent to the bringing of this action have been performed or have occurred.

**FIRST CLAIM FOR RELIEF
UNFAIR COMPETITION UNDER LANHAM ACT**

24. Nugent incorporates the allegations of paragraphs 1 through 23 by reference, the same as if fully set forth herein.

25. Defendants' use of the Crown Chic mark to promote, market, or sell pageantry related products in direct competition with Nugent's Crown Chic products constitutes unfair competition pursuant to 15 U.S.C. § 1125(a).

26. Defendants' use of the Crown Chic mark has caused and is likely to cause confusion, mistake, and deception among consumers. Defendants' unfair competition is causing irreparable harm to Nugent for which there is no adequate remedy at law.

27. On information and belief, Defendants will continue their unfair competition unless enjoined by this Court from so doing.

**SECOND CLAIM FOR RELIEF
FALSE DESCRIPTION UNDER LANHAM ACT**

28. Nugent repeats and hereby incorporates herein by reference, as though specifically pleaded herein, the allegations of paragraphs 1 through 27.

29. Defendants' Crown Chic mark is such a colorable imitation and copy of Nugent's mark established in the market for pageantry-related consumer products that Defendants' use thereof in the context of pageantry related products is likely to create confusion, or to cause mistake, or to deceive consumers as to the affiliation, connection or association of Nugent's products, or to deceive consumers as to the origin, sponsorship or approval of Nugent's products.

30. Nugent avers that Defendants' use of the term Crown Chic comprises a false description or representation of such business or products under 15 U.S.C. § 1125(a) (Section 43(a) of the Lanham Act). Defendants' acts of false description or representation are causing irreparable harm to Nugent for which there is no adequate remedy at law.

31. On information and belief, Defendants will continue their acts of false description or representation unless enjoined by this Court from so doing.

THIRD CLAIM FOR RELIEF
COMMON LAW INJURY TO BUSINESS REPUTATION

32. Nugent repeats and hereby incorporates herein by reference, as though specifically pleaded herein, the allegations of paragraphs 1 through 31.

33. Nugent alleges that Defendants's use of the mark "Crown Chic" injures and creates a likelihood of injury to Nugent's business reputation because persons encountering Defendants and their products will believe that Nugent is affiliated with or related to or has the

approval of Defendants, and any adverse reaction by the public to Defendants and the quality of their products and the nature of their business will injure the business reputation of Nugent and the goodwill that she enjoys in connection with her “Crown Chic” and “Crown Chic Boutique” marks. Defendants’ acts causing injury and creating a likelihood of injury to Nugent’s business reputation are causing irreparable harm to Nugent for which there is no adequate remedy at law.

34. On information and belief, Defendants will continue in their acts causing injury and creating a likelihood of injury to Nugent’s business reputation unless enjoined by this Court from so doing.

WHEREFORE, Nugent prays for judgment against defendants and in favor of Nugent ordering, adjudging and declaring that:

1. Jurisdiction is present and venue is proper;
2. An injunction issue enjoining each defendant, their respective agents, servants, employees, representatives, and all of those acting in concert or participation with any of them who receive actual notice of such injunction from:
 - (1) using in any manner, in whole or in part, Nugent’s “Crown logo” and the “Crown Chic” or “Crown Chic Boutique” marks, or any colorable imitation thereof, including, but not limited to in connection with any pageantry related business, product or service or similar or related business, product or service including any business, product or service related to evening gowns;
 - (2) falsely representing and/or passing off the business, goods and services of said defendants as being connected with Nugent, her business and/or products, or engaging in

any act which is likely to cause the trade or public in general, to believe that said defendants and/or their products or business with which they are connected, is in any way affiliated, associated, or connected with Nugent or sponsored by Nugent, her business and/or products; and

(3) seeking to register with any federal, state or local agency or authority, any trade dress or trademark which is a copy or colorable imitation of Nugent's "Crown logo" or the "Crown Chic" or "Crown Chic Boutique" marks;

3. Defendants' entire inventory of Crown Chic products be delivered for destruction as well as all labels, signs, prints, advertisements, brochures, letterhead, business cards and other materials in the possession, custody or control of any defendant and bearing the "Crown Chic" wording and/or "Crown logo", and any reproduction, counterfeit, copy, or colorable imitation thereof including its packaging and promotional materials as described herein;

4. Defendants cancel and/or expressly abandon any federal or state trademark, trade name or trade dress registrations or applications to register the same for or including any "Crown logo" or the marks "Crown Chic" or "Crown Chic Boutique" or any colorable imitation thereof including Defendants Sherri and Ronald Litton's United States trademark application No. 77/234800 for registration of "Crown Chic";

5. Defendants file with the Court and serve on Nugent within thirty (30) days after entry of the Injunction, a report in writing under oath setting forth in detail the manner and form in which Defendants have complied with the Injunction;

6. Nugent is the owner of her "Crown logo" and the "Crown Chic" and "Crown Chic Boutique" marks for use in connection with the sale of pageantry related products including all

pageantry related clothing and jewelry and therefore entitled to register said marks with all appropriate authorities;

7. Nugent be granted such other and further relief as the Court may deem just and equitable.

DATED this 10th day of January, 2008.

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